John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet *and* International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182. Case 20-CA-15546

June 18, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On March 29, 1982, Administrative Law Judge Gordon J. Myatt issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions limited to the failure of the Administrative Law Judge to include, in conformance with his other findings, certain matters in his "Conclusions of Law" and in his recommended Order.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and has decided to affirm the rulings, findings, and conclusions[1] of the Administrative Law Judge and to adopt his recommended Order,[2] as modified herein.[3]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet, Sacramento, California, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order, as so modified:

1. Insert the following as paragraph 1(d) and reletter the subsequent paragraphs accordingly:

"(d) Unilaterally modifying the terms of the existing collective-bargaining agreement without first notifying the Union and affording it an opportunity to bargain thereon."

2. Insert the following as paragraphs 2(b) and (c) and reletter the subsequent paragraphs accordingly:

"(b) Make unit employees whole for any losses they may have sustained as a result of Respondent's unilateral implementation of a reduced workweek, together with interest thereon to be computed in the manner prescribed in *F. W. Woolworth Company*, 90 NLRB 289 (1950), and *Florida Steel Corporation*, 231 NLRB 651 (1977). See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

"(c) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order."

3. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT bypass International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182, and deal directly with our employees with respect to wages, hours, and other terms and conditions of employment covering our employees in the following appropriate unit:

All employees employed at our 7100 Franklin Boulevard, Sacramento, California facility; excluding clerical employees, salesmen, nonproduction foreman, guards, and supervisors as defined in the Act.

WE WILL NOT coercively interrogate employees in preparation for the hearing of an unfair labor practice case in which we are involved.

[1] Although the Administrative Law Judge, in the section of his Decision entitled "Concluding Findings" found, *inter alia*, that Respondent violated Sec. 8(a)(5) of the Act by engaging in direct dealing with its employees in derogation of the Union's representative status, he omitted this conclusion from the section of his Decision entitled "Conclusions of Law." So as to resolve any possible doubt in this regard, we conclude as a matter of law that Respondent violated Sec. 8(a)(5) of the Act by engaging in direct dealing with its employees as found by the Administrative Law Judge.

[2] In accordance with his dissent in *Olympic Medical Corporation*, 250 NLRB 146 (1980), Member Jenkins would award interest on the backpay due based on the formula set forth therein.

[3] Although the Administrative Law Judge concluded, in par. 6 of the section of his Decision entitled "Conclusions of Law," that Respondent violated Sec. 8(a)(5) and (1) of the Act by unilaterally modifying the terms of the existing collective-bargaining agreement without first notifying the Union and affording it an opportunity to bargain thereon, in his recommended Order the Administrative Law Judge inadvertently failed to order that Respondent cease and desist from making such unilateral changes. We have modified the Administrative Law Judge's recommended Order to include such a cease-and-desist provision.

WE WILL NOT unilaterally modify the terms of the existing collective-bargaining agreement without first notifying the Union and affording it an opportunity to bargain thereon.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL bargain collectively with the above-named Union with respect to wages, hours, and other terms and conditions of employment of our employees in the unit described above.

WE WILL make unit employees whole, with interest, for any losses they may have sustained as a result of our unilateral implementation of a reduced workweek.

JOHN GEER CHEVROLET CO., INC.,
D/B/A PARKWOOD CHEVROLET

DECISION

STATEMENT OF THE CASE

GORDON J. MYATT, Administrative Law Judge: Upon a charge filed on August 5, 1980,[1] by International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182, (hereafter called the Union) against John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet (hereafter called the Respondent), the Regional Director for Region 20 issued a complaint and notice of hearing on September 30. The complaint alleged, *inter alia*, that the Union was the exclusive collective-bargaining representative of the Respondent's employees in an appropriate unit and that the Union and the Respondent were parties to successive collective-bargaining agreements, the most recent of which was effective for the period October 9, 1978, to August 1, 1981. It is also alleged that the Respondent violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act, as amended (hereafter called the Act), 29 U.S.C. §151, *et seq.*, by the following conduct: (1) bypassing the Union and dealing directly with employees about terms and conditions of employment; (2) assigning more arduous work tasks to and subsequently discharging employee Joel A. Roitinger because he engaged in protected concerted activity in seeking to enforce the terms of the existing collective-bargaining agreement; and (3) interrogating employees in preparation for hearing of the unfair labor practice charges without affording them the safeguards required by the Board in *Johnnie's Poultry Co. and John Bishop Poultry Co., Successor*, 146 NLRB 770 (1964).[2] The Respondent filed an answer in which it admitted certain allegations of the complaint, denied others, and specifically denied engaging in any conduct which violated the Act.

A hearing was held in this matter on April 14, 1981, in Sacramento, California. All parties were represented by counsel and afforded full opportunity to examine and cross-examine witnesses and to present material and relevant evidence on the issues. Briefs were submitted by all parties and have been duly considered.

Upon the entire record in this case,[3] including my observation of the witnesses and their deneanor while testifying, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Respondent is a California corporation engaged in retail sales, service, and repair of automobiles. Its office and principal place of business is located in Sacramento, California. During the calendar year ending December 31, 1979, the Respondent in the course of its business operations derived gross revenues in excess of $500,000. During the same period, the Respondent purchased and received at its Sacramento, California, facility products, goods, and other materials of value in excess of $50,000 directly from points located outside the State of California. The pleadings admit, and I find, that the Respondent is, and has been at all times material herein, an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182 is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background Facts*

As noted, the Respondent recognized the Union as the exclusive collective-bargaining representative of its employees in an appropriate unit and the parties were signatories to successive collective-bargaining agreements. The bargaining unit deemed appropriate was described as follows:

> All employees employed by the Employer at its 7100 Franklin Boulevard, Sacramento, California facility; excluding clerical employees, salesmen, nonproduction foremen, guards, and supervisors as defined in the Act.

The collective-bargaining agreement in effect between the parties contained the following provisions which are pertinent to the issues of this case:

[1] Unless otherwise indicated, all dates herein refer to the year 1980.

[2] Counsel for the General Counsel amended the complaint at the hearing to include the allegations of bypassing the Union and the misconduct under *Johnnie's Poultry*.

[3] Leave was granted to the parties to withdraw the original copies of certain exhibits and submit duplicates to the official reporter at a later date. However, these duplicate copies were not supplied to the reporter at the time the official record was submitted. Copies were subsequently received directly from the General Counsel, with the exception of Resp. Exh. 6, and they are hereby made a part of the official record.

Section 5. Seniority

A. The Employer shall be the judge of the competency of the men. Competency being equal, seniority by classification shall prevail in the reduction of forces and re-employment of men.

B. An employee shall lose his seniority for the following causes:

* * * * *

In the event of layoff, employees shall be laid off by seniority, except that an employee who is working on a job in progress shall be allowed to work out of seniority to complete the job. Apprentices shall stand in line in seniority according to ratio.

Section 8. Minimum Daily Guarantee

A. When an employee is called to work he shall be guaranteed a minimum of eight (8) hours pay for the day. . . .

* * * * *

C. It is agreed that the Employer will endeavor in every possible way to employ only such forces as will guarantee each employee a full week's pay.

B. *The Decision to Implement a Reduction in the Work Week of the Unit Employees*

Because of the gasoline crisis in early 1980, the Respondent experienced a sharp reduction in sales and service work at its dealership. In order to avoid the possibilities of layoff, management decided to adopt a plan reducing the workweek of the service department employees by means of rotating days off. The net effect of this proposal was to reduce each employee's workweek from 40 to 32 hours. On May 5, Bruce Frederick, the service manager, called a meeting of all the service department employees. Al Radovitch, the Respondent's general manager and operator of the dealership, also attended the meeting. Frederick explained the possibility of layoffs due to the decrease in business and the Respondent's desire to retain all of its employees. The proposal of rotating days off to reduce the workweek was offered to the employees as a means of avoiding layoffs.

Roitinger, the alleged discriminatee, asked how long the Respondent intended to keep the plan in effect and was told that it would be operative until business improved at the dealership.[4] The employees were asked to sign a typed statement indicating the proposal had been explained and they thoroughly understood it. (See G.C. Exh. 2.) It is evident from the testimony that by signing the statement, the employees were also expressing approval of the implementation of management's proposal. Roitinger protested that the proposal constituted a rewriting of the existing collective-bargaining agreement and could not be done legally. He was assured that the document was not binding. Roitinger then requested that a union representative be called, but was told that Milton Robeson, a coworker and the union shop steward, was the representative for the Union. Another employee, unidentified in the record, who was represented by a Teamster local also protested against the plan.[5]

The typed statement was given to the employees to sign, but Roitinger refused to put his signature on it and continued to protest.[6] He reminded management that the contract guaranteed the employees 8 hours work a day and stated the work should be spread among the more senior employees. Someone from management (the record is unclear whether it was Frederick or Radovitch) replied that all employees had a right to work and if any employees were laid off, the Respondent's unemployment insurance rates would increase. Sometime later during the day, Roitinger signed the document but indicated that he was doing so under protest.[7]

Radovitch testified on direct that he called Wayne Wheeler, area director of the Union, immediately after the meeting with the employees and informed him of the Respondent's intention to implement the rotation plan if business did not improve. According to Radovitch, Wheeler replied, "O.K." Radovitch interpreted Wheeler's response to indicate the Union consented to the plan. On cross-examination, however, Radovitch became less positive and stated that while he was certain he called Wheeler in the midmorning, it may have been after all the employees signed the sheet approving the plan or it may have been just before the Respondent put the plan into operation.

Wheeler denied having a conversation with Radovitch in May concerning the rotation plan. He stated he first learned of the rotation plan when the employees met at the Union's office in July. According to Wheeler, he was out of town on union matters on May 5, 6, 7, and 8 in Vallejo, California. A copy of his office calendar was submitted in evidence to establish his unavailability on these dates. (G.C. Exh. 8.)

C. *The Transfer of Roitinger to Heavy-Duty Work*

Until his discharge on July 29, Roitinger had worked for the Respondent since September 1963. He started as an apprentice and then became a journeyman mechanic. During the period of his employment with the Respondent, Roitinger performed virtually every phase of service and repair work. This included: lube work; machine shop work; arc welding; front-end alignment; trim work; light-line work which consisted of tune ups; electrical and carburetor work; brake work; heavy-duty front- and rear-end work; and diagnostic work involving the use of dynamometer and scope machines. The collective-bargaining agreement classified the mechanics as apprentices and journeymen without regard to any particular specialty. The testimony indicates the Respondent utilized the mechanics in every phase of the work, although some effort

[4] Radovitch testified it was management's hope that business would increase within the next 6 to 8 weeks.

[5] The Teamsters represented a separate unit of the Respondent's employees and this proposal apparently also applied to them.

[6] Radovitch told the employees that anyone unwilling to sign the typed statement should come to his office and discuss the matter further.

[7] The above facts regarding the meeting of May 5 constitute a syntheses of the uncontroverted testimony of the witnesses to this event.

was made to assign the mechanics jobs in the areas where they were the most proficient.

Sometime in 1979, Roitinger was sent by the Respondent to a special school in Los Angeles for training in the use of a dynamometer for diagnostic work. The Respondent was launching a program to develop diagnostic capabilities at its facility to promote more repair work from the public. In conjunction with this training, Roitinger independently attended special training classes on the use of the Sun scope in diagnostic work. As a part of the diagnostic program, Roitinger appeared in several local TV commercials for the Respondent as its version of "Mr. Good Wrench" touting the diagnostic capabilities at the Respondent's dealership. Sometime in 1980, Roitinger was replaced by another mechanic on the diagnostic work and was assigned to front-end work.[8]

In addition to his mechanic's duties, over the course of the years Roitinger served as union shop steward on approximately seven different occasions. He last served in this capacity in 1979. Roitinger resigned in November 1979 after the service manager became ill following a confrontation with Roitinger over a contract matter.[9] Roitinger was succeeded as shop steward by Milton Robeson, a mechanic who worked on the heavy-duty line.

Roitinger testified that 2 or 3 days after the meeting on May 5, he was called into Service Manager Frederick's office and told that he was being moved to heavy-duty work. When Roitinger inquired about the reason for his reassignment, he was informed that his front-end work was too slow and exceeded the flat-rate standards in the repair manuals used by the Respondent.[10] Roitinger stated he was also told that Frederick needed him on the heavy-duty line. Roitinger protested that he felt he was more effective on front-end work and requested that if Frederick transferred him to the heavy-duty line, he not be held to the flat-rate time since he had not performed this work for the past 2 years. According to Roitinger, Frederick assured him that management would not hold him to the flat-rate standards until he caught up on the new procedures.

Robeson testified that he was present in his capacity as shop steward when Frederick spoke to Roitinger about the transfer to heavy-duty work.[11] Although Robeson could not fix the precise date of this discussion, he recalled that it was "a week or so" after the meeting on the reduction of hours. Robeson also recalled that he was told by Frederick several days before the discussion with Roitinger that the service manager intended to reassign Roitinger to the heavy-duty line. He confirmed that Frederick told Roitinger the employee was too slow on front-end work and would be transferred to the heavy-duty line because Frederick felt he would be able to do a better job. He further confirmed that Roitinger stated he would not be able to meet the flat-rate standards for heavy-duty work and that Frederick said he would give Roitinger time to catch up on the new procedures. However, according to Robeson, Frederick stated he did not think Roitinger would have too much trouble in becoming competent in the new assignment.[12]

Although Frederick was no longer employed at the dealership, he was called as a witness by the Respondent.[13] Frederick stated he decided to transfer Roitinger because of the inability of the employee to consistently meet the flat-rate time limits on front-end work and because of the numerous "comebacks" on jobs that Roitinger performed. Frederick stated that on May 21 Roitinger exceeded the flat-rate time by 3.1 hours in installing a cruise control on a late-model Chevrolet. On May 23, according to Frederick, he called Roitinger and Robeson into his office and pointed out Roitinger's excessive time to them. Frederick stated it was at this point that he informed Roitinger that he was being transferred to heavy-duty work. Frederick testified he felt Roitinger's productivity would improve after the transfer because the employee had previously worked on the heavy-duty line and the jobs there usually involved longer periods of time. According to Frederick, Roitinger could concentrate on his work and thus do a competent job.[14] When Roitinger expressed the fear that he would be unfamiliar with the new procedures in the heavy-duty line, Frederick stated this was to be expected on the first few jobs. He told Roitinger that other experienced heavy-duty mechanics, such as Robeson and lead technician Close, would be available to assist him in becoming familiar with the work once again.

Frederick further testified that the transfer of Roitinger was not an unusual occurrence in the service department. He stated that 6 months after he became service manager in October 1978, he began moving mechanics around in order to improve the efficiency and productivity of the service department. Radovitch, Respondent's owner, testified that in 1977, although the Respondent was one of the largest dealerships in its sales zone, it had the worst repair record of any of the zone dealerships. In an effort to overcome this, management met with the employees and union officials to attempt to straighten out their problems. In 1979 and 1980, the Respondent's management decided to rotate employees to different job duties in order to determine the areas where they were the most productive. According to Radovitch, management made a decision to move Roitinger from front-end work a month before the program of rotating days off had been put into effect.

[8] While the exact date is unclear in the record, it is apparent that Roitinger was assigned to front-end work several months prior to May 1980.

[9] Although not explicitly stated, the implication of the testimony was that the manner in which Roitinger handled the contract matter contributed to the service manager's illness.

[10] It is customary in the auto repair business to use the manufacturer's and the mechanic's trade manuals to establish the time rates for all repair work. It is on this basis that customers are billed for shop labor. When a mechanic exceeds the established time limit on a given job, the Respondent suffers a monetary loss since it is asserted the excess time is not charged to the customer.

[11] At the time of the hearing, Robeson was no longer employed by the Respondent.

[12] Robeson estimated that when a skilled mechanic resumed heavy-duty work after a long layoff, it would take at least 6 months to become competent again.

[13] Frederick left the Respondent's employ in July 1980 after a dispute with the owner over changes in the service department. He made it clear at the hearing that he was unhappy over the manner in which his employment with the Respondent ended.

[14] Frederick expressed the opinion that Roitinger was a competent mechanic when he concentrated on his work.

Randolph Yount, current service manager and assistant service manager under Frederick, testified that in May 1980, the Respondent was moving a number of mechanics around in the service department. He stated this was done in order to achieve better productivity and to "condense" the shop. According to Yount, in each instance that such a move was made the union shop steward was consulted by management.

D. *Roitinger Complains to the Union About the Rotating Days Off and the Reduction in Hours*

Roitinger testified that in July he called the union office and requested that a business representative come to the shop to investigate the Respondent's program of rotating days off.[15] Edward Crouse, the business agent servicing the collective-bargaining agreement at the Respondent's dealership, stated he received a message on July 14 and went to the shop the following day. There he spoke with Roitinger and, according to Crouse, was informed for the first time of the rotation program which reduced the employees to a 32-hour week. Roitinger told Crouse he felt the employees were coerced and intimidated into signing the agreement to work fewer hours. Crouse then went to Frederick's office and told the service manager the program violated the provisions of the contract. He asked that the program be stopped. Frederick protested by stating that the Respondent should be allowed to spread the work among the employees and not be compelled to lay off employees by seniority. He told Crouse that if the Respondent had to comply with the Union's request, 85 percent of the employees would have to be laid off. He also told the union representative that the employees agreed to the rotation plan and showed him the document signed by the employees on May 5. The shop stewards were called in and it was agreed that they would poll the employees in the service department to see if they wanted to abide by the rotation agreement. The testimony indicates the employees were reluctant to discuss the matter on the shop floor and Crouse decided to meet with them at the union hall that evening.

Crouse returned to the shop floor and informed Roitinger of the scheduled meeting. At the time Roitinger had taken off his work shirt because he had spilled some transmission fluid on it. He did not change his shirt but continued working without it. As Crouse was leaving, Frederick came into the shop foreman's office in the area and called Crouse over. He pointed out that Roitinger was not wearing his shirt while working and stated that he should fire the employee. Crouse then went over to Roitinger and persuaded him to put the shirt on even though it was still wet with the transmission fluid.

Crouse met with the employees as scheduled that evening. Wayne Wheeler also attended the meeting. After discussing the circumstances under which the rotation plan had been put into effect by the Respondent, the employees voted to rescind their voluntary agreement to the plan. After the meeting Crouse called Radovitch at home. He informed Radovitch that the employees rejected the rotation plan and were insisting that the contract provisions be followed in terms of layoffs by seniority. Radovitch replied that only five or six employees would be working the next day.

Wheeler, unaware that Crouse had called Radovitch the evening before, went to the Respondent's shop the next day to inform Radovitch of the employees' decision. Radovitch complained to Wheeler about Crouse. He stated that everything was fine regarding the rotation plan until Crouse came to the shop. Wheeler took issue with Radovitch's statement and said Crouse came to the shop at the specific request of Roitinger. According to Wheeler, Radovitch then said he already knew the names of the employees who objected to the rotation plan as well as the names of the employees who opposed the arrangement at the union meeting.

E. *The Suspension and Termination of Roitinger*

As noted, Roitinger had performed duties in many phases of the Respondent's service department over the period of his employment. Frederick testified that when he became service manager in October 1978, Roitinger was working as a front-end mechanic. According to Frederick, Roitinger was warned repeatedly for exceeding the flat-rate times and for the numerous "comebacks" on his jobs.[16] Frederick stated that over the years, there were many complaints about Roitinger's work. He asserted that when he became service manager, he noticed that Roitinger's personnel file was "two to three inches thick" with written warnings issued by the prior service managers. He further testified that after repeated verbal warnings to Roitinger about the excessive time and the comebacks on the front-end work, Roitinger finally told him in December 1978 that the front-end machines were out of calibration and resulted in faulty alignment of the cars. According to Frederick, this was the first notice he had that inaccurate work was being caused by defects in the calibration of the front-end machines, although Roitinger had been working on them for months.[17]

Because Roitinger's work performance on the front-end line did not improve, Frederick decided to send him to a special training school in Los Angeles to learn diagnostic work. He made this decision despite the advice of Yount, the assistant service manager, that Roitinger "was not worth working with."[18] After Roitinger completed the courses, including his independent instruction at the Sun school, the Respondent embarked on an extensive advertising campaign offering diagnostic services to the public free of charge. Frederick testified that, for the first 3 weeks of the program, Roitinger performed well

[15] According to Roitinger, he attempted to persuade the shop steward to make such a request but his efforts went unheeded.

[16] "Comebacks" was the term applied to jobs on which the work was not properly performed and the customers brought the vehicles back to the service department.

[17] As a result of this information, Frederick had the machines inspected and repaired.

[18] Yount testified that he had the responsibility of reviewing the repair orders (ROs) on a daily basis and Roitinger exceeded the flat-rate time on 90 percent of his jobs. He stated that every job became a "problem job" to Roitinger no matter how straightforward the work to be performed. On January 26, 1979, Yount issued a written warning to Roitinger during Frederick's absence due to illness. This warning cited poor work resulting in comebacks and threatened Roitinger with termination if his performance did not improve. (Resp. Exh. 2.)

and met the time limits established for the diagnostic work.[19] Then, according to Frederick, the employee began to extend the time spent diagnosing each automobile to two to three times beyond the flat-rate time. He stated Roitinger complained that there was too much pressure on him in the diagnostic center and requested to be returned to light-line work (tuneups). Frederick subsequently replaced Roitinger in the diagnostic area with another mechanic and reassigned him to the light-line, from there he was subsequently assigned to front-end work again.

On May 7, 1980, Roitinger was charged with another comeback. He was to correct a complaint of a low brake pedal. After Roitinger worked on the vehicle, the customer brought the car back and complained that the brakes failed completely causing him to hit a curb in order to stop. Frederick put a notation in Roitinger's personnel file about this particular job. (Resp. Exh. 5.)

Frederick testified that after the excessive time taken on the installation of the cruise control on May 21, he changed Roitinger to the heavy-duty line. He called Roitinger into his office on May 23 in the presence of Robeson, the shop steward, and verbally warned the employee that he was taking excessive amounts of time to complete his work on the front-end line. It was then that Frederick transferred Roitinger to the heavy-duty line with the hope that his work performance would improve. The Respondent's records, however, reflect that Roitinger continued to experience difficulty in meeting the flat-time rates of the shop on the heavy-duty line. On June 30, 1980, Roitinger was assigned to correct a problem with a pickup which was overheating. According to the Respondent's records, Roitinger exceeded the flat-time rate by 4.2 hours in making these repairs. Roitinger testified that the work he had to do on the pickup required him to take the extra time.

On July 1, Roitinger was charged with 8 hours in excess of the flat-rate time in order to correct a problem with a transmission on a C-10 pickup that had a diesel motor. Roitinger testified he had never worked on an automatic heavy-duty transmission before and had to get advice from Robeson on how to make the repairs. Because of his unfamiliarity with the work, Roitinger stated it took him 16.8 hours to do a job that the Respondent allowed 8.8 hours to complete. (G.C. Exh. 5b.)

On July 5, 1980, Roitinger was assigned the job to check a vehicle for a possible fuel leak into its combustion chamber. (G.C. Exh. 5c.) According to the Respondent's records, Roitinger exceeded the flat-rate time by 3.4 hours in making these repairs. Roitinger testified that in order to correct the condition he had to perform what was tantamount to half of a valve job on one side of the engine.

The records also show that on July 2, 1980, a customer brought a Volkswagen into the shop for repairs. Since the Respondent did not normally work on Volkswagens, Roitinger was assigned to remove the engine so that the Respondent could send it out to another shop for rebuilding. Frederick testified that Roitinger exceeded the shop-rate time by 3.5 hours in removing the engine from the Volkswagen. According to Frederick, Roitinger had no work to perform on the job but simply to get the engine out so that it could be sent to another shop for rebuilding. Roitinger, on the other hand, testified that he had never worked on a Volkswagen before and that the automobile had been hit from the rear, therefore causing him to encounter problems in removing the engine.

On July 14, Roitinger was assigned to repair a water pump leak on an automobile. (G.C. Exh. 5e.) The Respondent's records reflect that Roitinger exceeded the flat-rate time by 2.3 hours in handling this job. Roitinger testified he first attempted to seal the water pump but when he tested it, it continued to leak. He then had to remove the water pump and replace it with a new one. For this reason, according to Roitinger, he spent an extra amount of time in making the repairs.

Roitinger was involved with another water pump repair job in July. (G.C. Exh. 5g.) The Respondent's records reflect that he also exceeded the flat-rate time by 2.3 hours in effectuating these repairs. Roitinger stated that he put a new water pump on the automobile and when he tested it he discovered the water pump was defective. According to Roitinger, he had to remove this pump and replace it with another. This caused him to go through the job twice at no fault of his own.

The Respondent's records also reveal that on July 9, 1980, Roitinger was given a truck on which he had to replace a unit in the differential. (G.C. Exh. 5i.) After the repairs were made, the customer subsequently brought the truck back claiming grease was leaking out of the differential because a plug had not been tightened. Roitinger was charged with this comeback. Roitinger testified that after he completed his work on the differential, another mechanic was supposed to replace the gasket on the truck and fill the differential with grease. In order to do so, according to Roitinger, it would have been necessary for this mechanic to have tightened the grease plug when he finished. Therefore, Roitinger testified he should not have been held responsible for this particular comeback.[20]

Finally, the testimony indicates that when the Volkswagen engine was returned from the rebuilder, Roitinger installed it but could not get the engine to start. In order to get the engine to fire, he used a starter fluid which the Respondent's mechanics customarily used on engines to get them to start, but he did not have any success. Roitinger then called on another mechanic, who was a foreign car specialist and worked in the Respondent's used car department, to assist him. Roitinger stated this

[19] The Respondent, in conjunction with the mechanics, established 15 to 20 minutes as the time standard for the diagnostic work on each vehicle.

On July 5, 1979, Frederick issued a written warning to Roitinger charging that he exceeded the flat-rate time on two ROs by 2.4 and 1.4 hours, respectively. Roitinger was warned that if he did not improve his performance, he would be suspended for 1 week without pay. (Resp. Exh. 3.) According to Frederick, Roitinger promised that he would try to improve his work performance.

[20] The Respondent's records also assert that Roitinger exceeded the shop time by .8 of an hour on another RO. (G.C. Exh. 5h.) However, Roitinger had no recollection of the job and the copy of the RO submitted into evidence was not legible.

mechanic also used starter fluid but could not get the engine to run.

Roitinger testified that the day following the meeting between the employees and the union representatives (July 15) he had a medical appointment at 3 p.m. and left work early. The following day he was called into Frederick's office along with the union shop steward. Roitinger was handed a suspension notice by Frederick. The notice cited the excessive time he had taken on repairs during the preceding 2 weeks and the comeback on the truck differential. It stated that Roitinger had caused the Respondent to lose income in the amount of $576 because of his poor performance and that he was suspended, starting July 18, for 5 working days. Roitinger was told that if his substandard work continued, he would be terminated. (G.C. Exh. 4.)

Frederick testified that the problem with the Volkswagen was "the straw that broke the camel's back." He stated he first felt that the rebuilders had performed faulty work on the engine and he had the Volkswagen towed to their shop. There the engine was removed a second time and the rebuilder showed him a bottle full of liquid that had been drained from the motor. Frederick and the rebuilder first thought the liquid was a paint thinner, but Frederick subsequently ascertained that it was the starter fluid which had been used in an effort to get the engine to run. He stated the fluid had dried out the sidewalls of the engine and it had to be rebuilt a second time at the Respondent's expense. Incensed over this incident, Frederick's first thought was to discharge Roitinger. However, he talked with the Respondent's attorney and decided that he would suspend the employee for 5 days. Frederick included in the suspension notice all of the problems that Roitinger had experienced over the past 2 weeks in performing his work.

Although Roitinger was scheduled to return to work on July 25, he did not do so. Frederick testified that he called Roitinger at home and was informed by the employee that the Union had advised him not to return to work until a grievance over his suspension was settled.[21] Frederick told Roitinger to report to work the next day or he would be terminated. When Roitinger failed to come to work, Frederick contacted him again, pursuant to Radovitch's instructions, and gave him until July 28 to report to work. Roitinger failed to do so and Frederick terminated him on July 29. (G.C. Exh. 7.)

F. *The Johnnie's Poultry Violation*

Robeson testified that on October 6, 1980, he was called into the service manager's office to meet with the Respondent's attorney. Robeson could not recall being told by the attorney that he was not required to talk with him or answer any of his questions. According to Robeson, the Respondent's counsel asked him if Roitinger was a good mechanic and whether he took too long to do his jobs. Robeson signed a typed statement reflecting this conversation with the Respondent's counsel. (Resp. Exh. 4.) In this statement Robeson said that Roitinger "did not do well on anything he did." He confirmed that Roitinger had been moved from one type of work to another in the shop. The statement concluded with the following comment by Robeson:

> I once told the Employer that Joel [Roitinger] had 16 years experience and one year of ability. (He cannot get it from his head to his hands.)

At the hearing, Robeson reaffirmed that the statement he gave the Respondent's counsel was true.

Close testified that he also met with the Respondent's counsel in the service manager's office in October. Close was unable to recall whether the Respondent's attorney informed him that he did not have to answer any questions. Close testified that the Respondent's attorney asked if Roitinger was slow in his work and he replied that Roitinger was on "some things." He was also asked by counsel if he voluntarily signed the agreement to rotate days off. Close said that he did not want to sign the document. Warren Rose, another mechanic, was questioned by the Respondent's counsel in October. Rose stated he was not informed that he did not have to answer any questions by counsel.

Although he did not testify under oath, the Respondent's counsel admitted in his opening statement that he talked to several employees in the service manager's office during his preparation for the hearing. According to his opening statement, the Respondent's counsel said he informed the employees that he was talking to them regarding the "situation with Joel Roitinger," and he advised the employees they did not have to talk to him if they did not wish to do so.

Concluding Findings

The General Counsel contends that Roitinger was engaged in protected concerted activity when he protested that the rotation plan violated the terms of the collective-bargaining agreement. Further, that the Respondent assigned Roitinger to more arduous and onerous duties, and ultimately suspended and terminated him, in retaliation for his opposition to the rotation plan. The General Counsel also contends that by meeting with the employees regarding the plan and then implementing it without first notifying and bargaining with the Union, the Respondent bypassed the Union and engaged in direct dealing with the employees concerning a change in existing terms and conditions of employment. Finally, the General Counsel contends that the Respondent's counsel unlawfully interrogated employees in preparation for the hearing of the unfair labor practice case by failing to extend the safeguards mandated by the Board's decision in *Johnnie's Poultry*.

The Respondent, on the other hand, argues that it did not engage in direct dealing with the employees regarding the rotation plan, but merely informed the employees of the proposal and had them sign a document indicating they understood what was being proposed. Moreover, the Respondent argues that the Union, through Wheeler, consented to the implementation of the plan. The Respondent also argues that Roitinger was suspended because of his poor work performance and was subsequent-

[21] The Union sent a letter to the Respondent, dated July 23, stating that Roitinger did not intend to return to work until the "Unfair Labor Practice for harassment and discrimination has been settled." (G.C. Exh. 6.)

ly discharged because he failed to report to work after his suspension was completed. The Respondent asserts that the suspension and termination would have occurred even in the absence of Roitinger's opposition to the rotation plan. As a final argument, the Respondent asserts that the entire dispute falls within the terms of the grievance procedure of the collective-bargaining agreement and the parties are "mandated" to follow the grievance procedure and the Board should defer to that process.

The first question to be addressed here is the Respondent's contention that the Board should abstain from asserting jurisdiction over the issues in this case and leave the parties to pursue their dispute through the contractual grievance procedure. I find no support for this position in current Board law or in the factual circumstances of this case.

Although the contractual grievance procedure provides for binding arbitration, if certain conditions are met, the grievance procedure was not invoked by either Roitinger or the Union. Thus, the Respondent is asking for deferral to *prospective* arbitration of not only union or group rights (the alleged 8(a)(5) violations) but also of individual rights (the alleged 8(a)(1) and (3) violations). In support of this position the Respondent cites the doctrine enunciated in *Collyer Insulated Wire, a Gulf and Western Systems Co.*, 192 NLRB 837 (1971), and its progeny. Since *Collyer*, however, a majority of the Board has held that it will refuse to defer in cases involving alleged violations of individual statutory rights such as Sections 8(a)(1) and (3) and 8(b)(1)(A) and (2). *General American Transportation Corporation*, 228 NLRB 808 (1977); *Valley Cabinet & Mfg., Inc.*, 253 NLRB 98, fn. 4 (1980); *Hospital and Institutional Workers Union, Local 250, SEIU, AFL–CIO*, 254 NLRB 834, fn. 1 (1981). See, also, *Max Factor & Co.*, 239 NLRB 804 (1978), enfd. 640 F.2d 197 (9th Cir. 1980). In light of the above, I find the Respondent's contention that the issues here should be deferred to the contractual grievance procedure must be rejected. Cf. *Jack Thompson Oldsmobile, Inc.*, 256 NLRB 24, fn. 4 (1981).

The next issue to be addressed here is whether Roitinger was engaged in protected concerted activity when he opposed the rotation plan at the meeting in May and when he caused the union representative to visit the shop in July. It is settled Board law that an attempt by an employee to enforce what he believes to be a provision of the collective-bargaining agreement is protected concerted activity. *Woodings Verona Tool Works*, 243 NLRB 472, 475 (1978), and the cases cited therein. Thus, when Roitinger accused the Respondent of attempting to write a new contract by means of the rotation plan, he was asserting that the Respondent's plan modified the seniority provisions of the existing collective-bargaining agreement. It is readily apparent, therefore, that by protesting this unilateral change in the layoff provisions of the existing contract, Roitinger was indeed engaging in protected concerted activity. Nor was he the only employee to oppose the plan at this meeting, as evidenced by the opposition expressed by an employee represented by the Teamsters Union. It logically follows that when Roitinger called the union office after the Respondent implemented the rotation plan and requested that a business representative come to the shop, he was continuing to engage in protected concerted activity in an effort to enforce the seniority provisions of the contract. It was only after his efforts in this regard that the Respondent was compelled to rescind the plan and revert to the provisions of the collective-bargaining agreement regarding layoffs.

This poses the question of whether Roitinger was assigned more arduous and onerous duties in retaliation for opposing the plan in May, and whether he was suspended and then discharged in July for being instrumental in causing the Union to compel the Respondent to adhere to the terms of the existing collective-bargaining agreement. It is apparent from the record facts that the General Counsel has effectively made a *prima facie* showing that Roitinger's work assignments were changed and the employee was ultimately suspended and terminated in retaliation for his activities in opposing the Respondent's rotation plan. In this connection, the record shows that shortly after he opposed the rotation plan at the meeting in May he was assigned to work on the heavy-duty line.[22] In addition, Roitinger was suspended 2 days after he caused the Union to send a representative to the shop to investigate the rotation plan and 1 day after the Union notified the Respondent that the employees were withdrawing their approval of the rotation plan. That the Respondent's management was aware that Roitinger was responsible for the union representative's visit to the shop is evidenced by the unrefuted testimony of Wheeler. When Wheeler notified Radovitch that the employees were withdrawing their approval of the plan, he informed Radovitch that Crouse came to the shop at the specific request of Roitinger.

Viewed in this posture, it is more than evident that the General Counsel has made a *prima facie* showing that the transfer of job assignments, and the suspension and ultimate termination of Roitinger were actions taken by the Respondent in retaliation for the employee having engaged in activity in opposition to the rotation plan. Under the analysis mandated by the Board in its *Wright Line* decision,[23] the burden at this point shifts to the Respondent to conclusively demonstrate that it would have taken this action against Roitinger even in the absence of the employee engaging in protected concerted activity. This I find the Respondent has successfully accomplished.

The record discloses that while Roitinger had been employed at the dealership for a number of years, his job performance was less than satisfactory. Frederick and Yount credibly testified that the employee consistently exceeded the flat-rate time standards in his work and had

[22] Although Roitinger testified he was transferred to the heavy-duty line on May 7, I did not credit him in this regard. Robeson, who was present when Roitinger was informed of the change in his job assignment, testified that it occurred "a week or so" after the meeting on May 5. Frederick testified that he transferred Roitinger to the heavy-duty line on May 23, after the employee spent an excessive amount of time installing a cruise control on a late-model Chevrolet. Since the Respondent's records show that Roitinger worked on this particular job on May 21, I find that he was assigned to the heavy-duty line on the date indicated by Frederick.

[23] *Wright Line, a Division of Wright Line, Inc.*, 251 NLRB 1083 (1980).

numerous "comebacks" on the jobs he performed. Although Roitinger had been assigned at one time or another to every phase of the mechanics' work in the service department, the complaints about his job performance followed him through each phase. By his own admission, he had received warnings from four different service managers in the past 5 years. Frederick testified that when he became service manager in October 1978, Roitinger's personnel file was 2 to 3 inches thick with warnings. Although Frederick frequently admonished Roitinger for his comebacks on front-end work when Frederick first became service manager, it was not until December of that year that Roitinger revealed that the front-end machines were out of calibration; thus presumably accounting for the faulty work.

When Frederick decided to send Roitinger to the diagnostic school, he did so against the advice of his assistant service manager who considered that "it was not worth the time" to attempt to work with Roitinger. After Roitinger returned from his special training and worked in the diagnostic center, his performance was only satisfactory for the first several weeks and then he began to exceed the flat-rate standards established by the shop. It was at his own request (because he considered the pressure too great in the diagnostic area) that he was replaced by another mechanic and reassigned to light-line work. From there he was subsequently placed on front-end work again. This shifting of Roitinger to various phases of the mechanic's work comports with the testimony of Frederick and Yount that they were moving the mechanics around in an effort to find an area of work where they could be the most productive. Because Roitinger continued to exceed the flat-rate standards, management decided to move him to the heavy-duty line. Frederick and Radovitch testified that this decision was made prior to the meeting with the employees on the rotation plan, and their testimony is supported by that of Robeson, then union shop steward. Robeson testified that he was informed of the decision to move Roitinger to heavy-duty work before the meeting on the rotation plan.

Thus, I find that Roitinger's transfer from front-end to heavy-duty work was contemplated by the Respondent's management prior to the announcement of the rotation plan to the employees. Further, that this change in job duties would have taken place even if Roitinger had not opposed the rotation plan at the meeting on May 5. The fact that the change did not occur until May 23, after Roitinger spent an excessive amount of time installing a cruise control in a late-model automobile, does not, in my judgment, warrant a different conclusion. Rather, this was simply the incident which caused Frederick to implement the change previously decided upon by management.

Roitinger's work on the heavy-duty line, however, did not evidence any improvement. He consistently exceeded the flat-time standards and continued to have "comebacks." This bears out Robeson's assessment, reaffirmed at the hearing, that Roitinger had "16 years of experience and one year of ability." The triggering incident resulting in his suspension was his performance on the job involving the Volkswagen engine. Management had to absorb the cost of having this engine rebuilt a second time and held Roitinger responsible for this expense. Frederick initially wanted to fire Roitinger but, after consultation with the Respondent's attorney, decided to suspend him for 5 working days. It is clear from the unrefuted testimony that other mechanics with fewer warnings for substandard performance had been suspended or terminated by the Respondent in the past. Thus, it cannot be said that management's treatment of Roitinger at this point differed from the discipline imposed upon other mechanics whose work was below par. Indeed, the record here demonstrates that management exercised considerable forbearance in its treatment of Roitinger over the course of his employment. Therefore, I find the suspension of Roitinger on July 18 for 5 working days would have taken place regardless of whether he had opposed the rotation plan and thereby caused the Union to take steps to compel the Respondent to rescind it. In arriving at this conclusion, I am not unmindful that Roitinger was identified as the person who caused Crouse to visit the shop to investigate the plan. But even considering this fact, I find that Roitinger would have been suspended nevertheless had he not engaged in this activity.

After the completion of the period of his suspension, Roitinger refused to return to work. He continued in this refusal even though the Respondent extended the deadline for his return until July 28. Roitinger insisted, through the Union, that he would not return until the dispute over his suspension was resolved. It is apparent, therefore, that the Respondent had a legitimate business reason for discharging Roitinger because of his refusal to report to work. It is equally apparent that Roitinger would have been discharged in these circumstances absent any protected concerted activity on his part. As counsel for the Respondent correctly pointed out, there was a grievance procedure contained in the contract and this was the proper mechanism for contesting the suspension.

In sum, I find that while the General Counsel has established a *prima facie* case of discriminatory treatment of Roitinger, the Respondent has fully demonstrated that the action taken against Roitinger would have occurred even if the employee had not been involved in protected concerted activity. Accordingly, the record facts do not support the finding that the Respondent discriminated against Roitinger because he engaged in protected concerted activity and these allegations of the complaint should be dismissed.

The Respondent's contention that it did not bypass the Union and engage in direct dealing with the employees over the plan for rotation of days off is not supported by the record. It is undisputed that Frederick, with the approval of Radovitch, explained the plan to the assembled employees on May 5 and sought their approval of the program by having the employees sign a document indicating they understood the plan. To assert that this document was nothing more than an indication that the signatories understood what was entailed in the plan is to engage in disingenuous argument. It is evident from the statements made at the meeting by Frederick and Radovitch that management was asking the employees to

agree to their proposal to ignore the seniority provisions of the contract and spread the work by reducing the workweek of each employee by 8 hours. Any employee unwilling to sign the document was asked to meet privately with Radovitch in his office. Furthermore, it is clear that the Respondent's officials treated the signing of the document as evidence of the signatories' approval of the Respondent's proposal to implement the plan. Indeed, Frederick showed the document to Crouse as proof that the employees approved the plan.

I do not credit Radovitch's testimony that he contacted Wheeler after the meeting and was given a verbal "O.K." to put the rotation plan into effect. Radovitch was initially very positive that he called Wheeler on the telephone immediately after the meeting with the employees. On cross-examination, however, Radovitch's testimony became extremely vague and he was uncertain whether he called Wheeler that day or some subsequent day before putting the plan into effect. Wheeler, on the other hand, steadfastly maintained he had not received any such call from Radovitch, and his calendar of appointments indicated that he was out of town on union business on the days that Radovitch asserted he contacted Wheeler. Moreover, it is evident from the testimony that Crouse did not know of the rotation plan when he visited the Respondent's service department at Roitinger's request on July 15. It is highly unlikely that the business agent responsible for servicing the collective-bargaining agreement at the Respondent's shop would not be informed by his superior of an arrangement which would substantially modify a provision of the contract. I conclude therefore that Radovitch's testimony on this point is substantially unreliable and I find that the Union was never notified of the rotation program until Crouse met with Roitinger in the shop on July 15.

In these circumstances, it is readily apparent that the Respondent was engaging in direct dealing with the employees and once it acquired their approval of the Respondent's proposal to reduce the workweek, the plan was put into effect without notification to the Union. It is also evident that the reduction in the workweek through rotation of days off modified an existing term and condition of employment contained in the collective-bargaining agreement.

It is well settled that employees have the right to engage in collective bargaining through their statutory representative and that when an employer deals directly with employees in derogation of the exclusivity of the representative status of a union, it interferes with this right in violation of Section 8(a)(1) of the Act. *Shenango Steel Buildings, Inc.*, 231 NLRB 586 (1977). It follows that by dealing directly with the employees and bypassing the Union as their exclusive representative, the Respondent was unilaterally modifying an existing term and condition of employment contained in the collective-bargaining agreement in violation of Section 8(a)(5) of the Act. *Kaiser-Permanente Medical Care Program*, 248 NLRB 147 (1980); *J. D. Lunsford Plumbing, Heating and Air Conditioning, Inc., and Lunsford Brothers Mechanical, Inc.*, 237 NLRB 128 (1978); *Pacific Southwest Airlines and Pacific Southwest Airmotive*, 233 NLRB 1 (1977); *Airport Limousine Service, Inc., and Jay McNeill Esq. as Receiver for Airport Limousine Service, Inc.*, 231 NLRB 932 (1977). Accordingly, I find that the Respondent has violated Section 8(a)(1) and (5) of the Act by engaging in direct dealing with the employees in derogation of the Union's representative status and by unilaterally modifying in midterm a provision of the existing collective-bargaining agreement.

There remains one final issue to be resolved here. It is alleged that the Respondent's counsel did not afford the employees the safeguards required by *Johnnie's Poultry* when interrogating them in preparation for hearing of the unfair labor practice case. In *Johnnie's Poultry*,[24] the Board set forth certain requirements deemed necessary to dispel coercion during employee interrogation in these circumstances. In that case the Board stated it would require the following:

> [T]he employer must communicate to the employee the purpose of the questioning, assure him that no reprisal will take place, and obtain his participation on a voluntary basis; the questioning must occur in a context free from employer hostility to union organization and must not be itself coercive in nature; and the questions must not exceed the necessities of the legitimate purpose by prying into other union matters, eliciting information concerning an employee's subjective state of mind, or otherwise interfering with the statutory rights of employees. [*Id.* at 775.]

In a relatively recent case the Board has held that the *Johnnie's Poultry* safeguards constitute "the minimum required to dispel the potential for coercion in circumstances where an employee is interrogated concerning his intended testimony before the Board." *Standard-Coosa-Thatcher, Carpet Yarn Division, Inc.*, 257 NLRB 304 (1981). In the instant case, the Respondent's counsel asserted in his opening statement that he informed the employees they did not have to talk to him. When questioned about this event, Robeson testified that he was unable to recall whether the Respondent's attorney made this statement during the interrogation. Rose and Close specifically denied being told they did not have to talk with the Respondent's counsel. Without considering the issue presented by statements of counsel (sans oath) as opposed to testimony of the employees (given under oath), it is apparent that by counsel's own statements all of the safeguards of *Johnnie's Poultry* were not given to the employees. Not only must the interrogator explain the purpose of the questions but he must also assure the employee that no reprisal will take place and that participation is on a voluntary basis. Here the Respondent's counsel failed to take these necessary steps. Thus, I have no alternative but to find that the complete panoply of *Johnnie's Poultry* safeguards were not extended to the employees during counsel's pretrial preparation and a violation of Section 8(a)(1) of the Act has been committed. *Standard-Coosa-Thatcher, Carpet Yarn Division, Inc., supra; W. W. Grainger, Inc.*, 255 NLRB 1106 (1981).

[24] *Johnnie's Poultry Co. and John Bishop Poultry Co., Successor*, 146 NLRB 770 (1964).

CONCLUSIONS OF LAW

1. The Respondent, John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182 is a labor organization within the meaning of Section 2(5) of the Act.

3. The above-named labor organization has been, and is now, the exclusive representative of all of the employees in the unit described below for purposes of collective bargaining within the meaning of Section 9(a) of the Act.

4. The unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act is:

> All employees employed by the Employer at his 7100 Franklin Boulevard, Sacramento, California facility; excluding clerical employees, salesmen, nonproduction foremen, guards, and supervisors as defined in the Act.

5. By dealing directly with the employees in the above unit concerning terms and conditions of their employment, the Respondent interfered with the right of the employees to engage in collective bargaining through their statutory representative in violation of Section 8(a)(1) of the Act.

6. By unilaterally modifying the terms of the existing collective-bargaining agreement without first notifying the Union and affording it an opportunity to bargain thereon, the Respondent refused to recognize and bargain collectively with the Union in violation of Section 8(a)(5) and (1) of the Act.

7. By coercively interrogating employees during preparation for the hearing of the unfair labor practice case herein, the Respondent violated Section 8(a)(1) of the Act.

8. The Respondent did not violate Section 8(a)(1) and (3) of the Act by transferring employee Joel Roitinger to a different job assignment or by suspending and ultimately discharging this employee.

9. The above conduct constitutes unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has committed unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, it shall be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[25]

The Respondent, John Geer Chevrolet Co., Inc., d/b/a Parkwood Chevrolet, Sacramento, California, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning wages, hours, and other terms and conditions of employment with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182 as the exclusive bargaining representative of its employees in the following appropriate unit:

> All employees employed by the employer at its 7100 Franklin Boulevard, Sacramento, California facility; excluding clerical employees, salesmen, nonproduction foremen, guards, and supervisors as defined in the Act.

(b) Dealing directly with its employees in the above-described unit concerning terms and conditions of employment in derogation of the exclusive status of their bargaining representative.

(c) Coercively interrogating employees during pretrial preparation concerning their intended testimony.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action:

(a) Bargain collectively with International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 190, Local Lodge No. 2182 with respect to wages, hours, and other terms and conditions of employment of the employees in the unit described above.

(b) Post at its Sacramento, California, facilities copies of the attached notice marked "Appendix."[26] Copies of said notice, on forms provided by the Regional Director for Region 20, after being duly signed by the representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by the Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 20, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

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[25] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

[26] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."